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Developing an Identity of Responsible Lawyering Through Experiential Learning

by
HOMER C. LA RUE*

Professional identity is learned. The process of taking on a role of a certain kind of professional demands concessions from the would-be role-player. In law, the would-be lawyer must, among other things, learn to “think like a lawyer.”¹ Seen in its most positive form, “thinking like a lawyer” probably means nothing more than thinking clearly and analytically about a defined set of facts or circumstances. In recent years, many law teachers have expanded the content of what goes into teaching novitiates to think like a lawyer. Consideration is given to the systemic basis of legal doctrine, which raises issues of dominant and subordinate values, public policy, and economics. At times, the classroom discussion may embrace factors involving the dynamics of the interpersonal relationships of the parties.²

However, even when the meaning of “thinking like a lawyer” is broadened, the method remains pretty much what it has been for years. Much time is spent on finding the legal rule or doctrinal point, learning the rules of procedure, and analyzing a limited range of legal documents (generally appellate opinions).³ Very little time is spent on helping stu-

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1. One study interviewing law students found that they “felt that . . . the biggest change they had undergone was in learning to ‘think like a lawyer,’ i.e., to distinguish a legal from a nonlegal issue, to see the various sides of a problem, to reason formally and logically, and to express themselves clearly, concisely, and unemotionally.” Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School*, 13 LAW & SOC’Y REV. 11, 30 (1978).

2. See Steven D. Pepe, *Essays on Legal Education: Clinical Legal Education: Is Taking Rites Seriously A Fantasy, Folly, or Failure?*, 18 U. MICH. J.L. REF. 307 (1985) (reviewing criticisms of the adequacy of the initial training for attorneys provided by law schools).

3. THOMAS L. SHAFFER & ROBERT S. REDMOUNT, *LAWYERS, LAW STUDENTS AND PEOPLE* 127 (1977).

dents define for themselves what it means to be in-role as a lawyer, the role's effect on self-identity and vice versa, or the connection between that role as lawyer and the clients whom they represent.

I suggest that the experiential component or the client representation portion of the Legal Theory and Practice (LTP) program is key to the education of a responsible lawyer. Through it, students gain a deeper understanding of lawyering as a human enterprise in which human interests and values are taken to be of primary importance.⁴

There are two themes, which for me form the underlying idea of the LTP program. One of those themes is the interplay between self-identity and lawyer-role.⁵ The other theme or notion is the role of lawyer as the creator of legal accounts that are translations of actual people's stories. Attention to these two themes aids students in learning that their lawyering is connected with and is an integral part of the lives of those persons with whom they are working. This piece can only begin to sketch these themes and attempt to relate them to the LTP program as I presently see it. The program is continuously evolving: different today from what it was in 1989 when it was launched, and different tomorrow from what it is today.

I do not suggest that every student taking an LTP course has a transformative experience in which she moves from "conventional moral reasoning"⁶ to a reasoning that emanates from a full integration of all

4. One might question whether there is any difference between the goal of understanding lawyering as a human enterprise and the goal of traditional clinical education. There may be none, but the question implies that the LTP program carries an implicit critique of traditional clinical education. If it does, it is the same critique of what might be called traditional classroom teaching. Both traditional clinical and classroom education are two sides of the same enterprise, but there has been little attempt to integrate the two approaches.

The City University of New York Law School at Queens College (CUNY) was one attempt to bridge the gap between the two approaches to legal education. The LTP program continues in this tradition, in that it attempts to draw on the best aspects of clinical and traditional classroom teaching. See Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990).

5. One of the contributions of CUNY is that the definition of lawyer-role is made an explicit part of the teaching agenda. The message that students get is that who they are as lawyers is a matter of choice, irrespective of whether they recognize the existence of the choices. Jack Himmelstein, a former colleague at CUNY, contributed immensely to student and faculty understanding of the importance of this inquiry. ELIZABETH DVORKIN ET AL., *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* 37-40 (1981).

6. A lawyer exercising "conventional moral reasoning" would "look to the Code of Professional Responsibility as the most authoritative source of guidance for his decisions on ethical issues relating to his own behavior. . . . In situations which are unclear, further clarification of the law would be sought from fellow lawyers and judges." Thomas E. Willging

dimensions of the person.⁷ Nor does every student understand the lawyer's role as translator as one of power, in which the client being served can be further silenced or assisted in obtaining her, his, or the community's own voice. However, there is anecdotal evidence that for some students, such a transformation does take place. Whatever the number of students affected may be, the LTP courses legitimate the inquiry into how law can serve human needs.

I. Rent Court as One Context for Experiential Learning

It is November. The rain started during the night and has continued into the morning. At 8:45 a.m. it is wet and cold outside a renovated Sears & Roebuck building into which throngs of people begin to assemble. This is the site of the housing court (known by tenants and landlords as "Rent Court") for the City of Baltimore.⁸ What you notice first about the people is that they are almost all African-American, at least those who appear most besieged and bewildered. Perhaps the bewilderment comes from their being consumed by the crowd of people and the thought that someone is about to say whether they may stay in or must leave their residences. The second thing you notice about the people milling about in the hall outside the courtroom is that they are predominantly female. Perhaps the look of being besieged comes from the fact that many have small children in tow while they are trying to understand this maze of people and procedure. Finally, you notice that most of the folks in this hallway are poor. They are in this place to tell a judge why

& Thomas G. Dunn, *The Moral Development of the Law Student: Theory and Data on Legal Education*, 31 J. LEGAL EDUC. 306, 314 (1981).

7. Some schools of thought have characterized this integration as between the subjective and the intellectual. See DVORKIN ET AL., *supra* note 5, at 39 (comment of Jack Himmelstein) ("The subjective dimension includes the emotional and much more in addition; the way we experience the world, our self-images, our thinking processes, our values and beliefs and our sense of purpose and meaning."). The humanistic school of thought has helped to expand what we consider to be important to focus on in legal education. It is necessary, however, to go beyond being in touch with our personal selves. We must also learn how to act effectively in the world.

8. One of the roles of a traditional housing court is to adjudicate actions for evictions. This function is performed by Rent Court in Baltimore City. For the sake of administrative convenience, matters brought in Rent Court are limited to summary ejection actions by a landlord against a tenant arising out of the nonpayment of rent. The tenant is entitled to raise the warranty of habitability as a defense to the nonpayment. Any matters not related to rent or the conditions of the premises are heard in another adjudicative forum.

In 1987, 80,072 actions were filed which resulted in 5072 evictions. Some judges have characterized the court as the landlord's collection agent. The eviction rate in Baltimore City is among the top in the United States. Michael A. Fletcher, *Evictions in City Among Tops in U.S.*, THE EVENING SUN (Baltimore), Nov. 14, 1988, at 1.

they ought to be permitted to stay in their houses or apartments, no matter how rundown and hazardous to their health those dwellings might be. They are here alone. There is no one to translate what is happening. For the most part, their understanding goes no further than a view of the bottom line: Will I be able to stay in the apartment, or will I be evicted?

Is there anything about this brief description that is important to the education of a law student? If there is something important, as I believe there is, can it be taught or learned in law school?

The student-lawyer coming into this milieu is understandably confused, perhaps also a little daunted by the maze of people and procedure. She is faced with the difficult question of what it means to be a lawyer in Rent Court. Her most immediate concern is that she must translate someone else's story and, in so doing, must perform. The student's strong inclination is to look to the role—the mores, attitudes, and behavior of the profession—for guidance regarding how to be and how to act. Deeper questions about the student's reaction to this scene and her connection with it are tucked away into the background.

The student is now fully at risk of adopting a way of being that will separate her from her aspirations for herself, the law, and humanity.⁹ The risk derives from the act of translation. Unlike the tenants in Rent Court, the student-lawyer can translate what is happening into a presentation that the person in power, the judge, can understand. As the student learns to become proficient at that translation, she also learns to deal with the human beings involved from the perspective of her role as a lawyer. To the extent that role identification becomes dominant, the student will become more than the translator; she will become the storyteller.

Translating the human stories of the people in Rent Court into legal accounts distances students from their clients when the role predominates the translation. The student will subordinate the client and, in so doing, will probably tell an incomplete and unconvincing story. The use of translation to tell the story will enhance the power differential between the lawyer and the client to the detriment of the client. When differences in race or gender between the lawyer and client are added to this dy-

9. It is, perhaps, understandable that a novice student-lawyer's principal mode of decisionmaking would be characterized by adaptation of behavior "to the level apparently expected by others in significant relationships with the lawyer. Client expectations would loom large at this stage as would expectations and role-modeling behaviors of judges and other lawyers." Willging & Dunn, *supra* note 6, at 314.

It also is understandable that in a group which is not self-selected (the LTP program is mandatory), not all students move beyond the kind of moral reasoning that is primarily affected by "significant relationships" rather than by individually developed moral principles.

namic, the lawyer's account can leave the client silenced in ways that subordinate the client even further.

II. The LTP Program's Impact on the Lawyering Role

One critical question we ask in all our cases is how the lawyer can become a partisan translator without becoming the storyteller? The lawyer must first experience the client as a person. In order to do that, students need to obtain an appreciation for the "everyday life"¹⁰ of the people summoned to Rent Court. Students must understand that the people whom they represent in Rent Court are people upon whom the law intrudes all the time. That intrusion is seldom by invitation; rather, it is the quid pro quo for obtaining the basic necessities of life (such as food stamps, health care, and family subsistence payments). Understanding the way law impacts on the day-to-day life of the poor is a first step toward understanding the reaction such persons have to the legal assistance the students attempt to provide in an LTP course.¹¹

Students need to understand the human story behind the sifted and sorted-out facts on which appellate case decisions are based. Students need to understand how they learn to become the translator of human stories into legal stories. If they come to understand their clients, students will be better able to understand the human stories they will translate. The work of representing the subordinated is "remarkably complex and enigmatic work" and remains "the work we know so little about."¹²

10. The importance of understanding "everyday life" is pressed by Gerald López.

As long as far too little of everyday life makes its way into and gets serious attention in the general approach to legal education, we can expect that too many of our future lawyers will continue to believe that they do their best work *only and always at a distance from and without a deep appreciation for those with whom they work.*

Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 339-40 (1989) (emphasis added) [hereinafter López, *Training Future Lawyers*]; see also Gerald López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989) (speech delivered to the Stanford community to mark his inauguration as the first Kenneth and Harle Montgomery Professor of Public Interest Law) [hereinafter López, *The Work We Know So Little About*].

11. See Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970) (arguing that people who are not poor live settled and harmonious lives in which the intrusion of law is the exception rather than the everyday means by which the necessities of life are obtained); see also López, *The Work We Know So Little About*, *supra* note 10 (discussing the everyday life of Maria Elena, a single woman of color raising her family in the midst of poor schools, unemployment or under-employment, and inadequate social support). Both Wexler and López note that lawyers seeking to represent poor people find themselves ill-equipped by their law school training to function effectively.

12. López, *The Work We Know So Little About*, *supra* note 10, at 10.

Partisan translation is complex because the primary experience of law school is the study of appellate cases that strip away life experiences and translate people into legally cognizable elements. It is also complex because the people the students must come to know are poor people of color who frequently are women, while the students are predominantly white and relatively affluent. The tendency is for students to view law and lawyering as a monolithic enterprise of interpreting cases and statutes to arrive at legal rules that provide remedies for wrongs irrespective of the parties' race, class, or gender. As Professors Boldt and Feldman note in their piece, law is taught as if the decisionmakers have no social perspective¹³—as if the law is objective, scientific truth, or at least as close to it as human endeavor can get.

Partisan translation also is complex because, for the first time, the student is called upon "to speak" on behalf of someone else. For some students, this experience is one of their first "successes" in law school. For many, the first year experience has already taught them to devalue their ability to intervene on behalf of others in legal matters. Not having been called upon to act, they underestimate their ability to do so.

All of these barriers—the culture of poverty, the differences rooted in race and gender, the sterility of appellate cases, the inexperience with advocacy, and the seduction of being the translator—produce significant tension.

For some, that tension is exhibited by some degree of disdain for the client. This is particularly true when the student says that the client is "not very good." Recoded, this usually means that the client is not very articulate, perhaps not as prone to take the initiative as the student would like, and perhaps somewhat hostile and skeptical of the student-lawyer's motives for representing the client.

The dictate of the student's role is that the lawyer gets to the problem and begins to formulate options for resolving it. The client is a "good client," therefore, if she can articulate the facts of her problem, preferably without emotion, and if she seeks an outcome which fits into the definition of a legal remedy. Such behavior by the client comports with the traditional definition of the lawyer's role, which emphasizes dispassionate assessment of the problem to determine if it is recognized by

13. Richard Boldt & Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric, and Social Context*, 43 HASTINGS L.J. 1111, 1114 (1992); see also Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 2-3 (1989) (discussing the norm of "perspectivelessness" in law school culture as problematic and particularly burdensome for minority students); see also López, *Training Future Lawyers*, *supra* note 10, at 343 (discussing the shortcomings of legal education in actually preparing law students to perform in the real world).

the law. The role permits the student to cloak what she might be feeling about the client and the reasons for those feelings. The subjective aspect of the interaction between the student and the client becomes irrelevant to the representation of the client.

The LTP program is a brief opportunity to begin to understand what it means to make choices in a context where the options appear limited and dictated by forces not of the student's making.

A. The Rent Escrow Case: A Little Window

One student represented a woman with three children who had a rent escrow claim¹⁴ against her landlords. The student-lawyer formed a "good" opinion of the client from the outset. Although poor and a single parent, the client was rearing her children with love and discipline. She also was trying to improve her economic standing by engaging in a training program provided by the welfare system. While her house was in poor condition, the student-lawyer was impressed with how the client kept it clean and tidy. Moreover, this was a client who kept records of conversations with her landlords. She had notes of when she had told the landlords about conditions in the house that were in desperate need of repair. The client was also well-spoken and not given to bouts of emotion or anger. The student-lawyer was convinced that he had a good case, not only for establishing a rent escrow account, but also for an immediate abatement of the current rent as well as a substantial amount of the past rent paid.

Prior to the hearing, the student-lawyer and the client engaged in negotiations with the landlords in an attempt to resolve the matters at issue. The landlords, two middle-aged white males, were unrepresented by counsel. The landlords insisted that if the client, an African-American female, did not like the house, she should move out. She indicated that she was looking for a new place but needed time. In the meantime, there were certain conditions that needed immediate attention, because they caused heat loss in the house, and it was November. No agreement was reached, and the matter proceeded to hearing.

During the course of presenting proofs before the judge, the landlords asserted that they had tried to resolve the matter with the client, but that she had been unreasonable. They indicated they were willing to make certain repairs related to heat-loss on the condition that the tenant

14. Under a Baltimore City local law, a tenant may seek to pay her rent into court pending the landlord's completion of repairs of the tenant's dwelling as ordered by the court. BALTIMORE, MD., PUBLIC LOCAL LAW § 9.9 (1980).

move out within sixty days. This had been the client's offer which had been rejected.

The judge, a white female, first asked the client why she had not accepted the offer which the judge stated appeared to be more than generous. The student-lawyer indicated that the offer had been his client's offer to the landlords and had been rejected by them. The judge, having first insisted that the tenant should accept the landlords' offer, then reversed herself, saying she would not permit the landlords to agree to make the repairs under such conditions. She indicated that if the landlords made the repairs, there would be no incentive for the tenant to move out as the agreement required. She therefore ordered the establishment of a rent escrow account, but with no abatement of the rent.

The client, who had been trying to get the judge's permission to speak, was silenced. By the end of the proceedings, she was in tears from the frustration. The judge had made certain assumptions about what the client's behavior would be based upon her status as an indigent tenant, and perhaps also based upon her race.

The student-lawyer was also frustrated by the judge's actions. At one point, he challenged the judge on a ruling. The manner of the challenge ignored some of the niceties of the protocol lawyers are expected to follow. The student-lawyer expressed outrage at the judge's capriciousness.

This case communicates stark, powerful messages about power. It would have been quite easy for the student-lawyer to infer that he was the savior of the unfortunate tenant who could not order her affairs well enough to stay out of Rent Court. Moreover, he could have embraced the dubious assumption that litigation is the best way to respond to the underlying problems facing poor people who must struggle to remain in even substandard housing.¹⁵ There is also the risk of egotism. The student could have become so consumed with his need to perform, being defined as the minutes when the student stands before the judge, that he subordinated all other concerns.

In a later private discussion with me and in Rounds¹⁶ the student, a white male, remarked that the judge never really saw who his client was.

15. A litigation-centered role encourages students to remain focused on the merits of the dispute rather than on an analysis of the institution of adjudication. Students overemphasize the capacity of litigation to be responsive to the real needs of the people involved. *See* Lesnick, *supra* note 4, at 1178.

16. Borrowed, in part, from the medical school curriculum, Rounds is a meeting of the entire class for the purpose of reflecting on and analyzing the students' lawyering experiences. The student-lawyer's work is the grist for these discussions. Rounds meetings not only involve

The judge only saw a poor person of color and assumed that she was trying to get more than that to which she was entitled. He was genuinely outraged at the judge's inability or unwillingness to see past her racial and class biases. The student noticed how his own desire to "win" pushed him to identify with his client in a way that permitted him to experience, if only for a moment, the powerlessness of a person who lives her life in a state of subordination.

The student's reaction to his experiences was based, in part, on his comprehension of his relationship with his client. Only after discussion with me and in Rounds did he begin to make the connection between what happened to his client, the social system, and the rules which undergird that system. The rules of the system are that everyone has equal access to the courts, and everyone is entitled to a fair hearing. The reality of the system is that it often fails to see or to hear those subordinated by race, gender, or class. Perhaps the relationship between the concrete legal problem and the broader social context will occur to the student in the future. What seems apparent, however, is that absent this experiential opportunity in the role of lawyer, the possibility would not have been created.

The preceding discussion is premised upon the assumption that the clinical component of the LTP program would be simply unreflective experiences absent their being brought back into the classroom. There is certainly a very good chance that the experiences would be marginalized. Within the limited scope of this piece, it is not possible to discuss in-depth the content of the classroom discussion. Selected readings in the course focus on the subjects of the self/role tension, the role of the lawyer as translator, the experiences of the students, and the broader social context into which they fit. The goal is to make explicit the ways in which all of these elements interact in the student's acquisition of professional identity.

B. The Madison Park Case: A "Big" Window

Discussion and analysis of alternative responses to the housing problems of poor people are discussed in Rounds.¹⁷ Discussion seldom

reflection on action taken, but also provide a forum for planning the strategy to be taken in the representation of a client.

17. For example, one alternative strategy would selectively enforce the warranty of habitability law on the theory that scarce legal resources should be concentrated where they can do the most good. Such a strategy would mean turning away clients with apparently meritorious claims because enforcement of the warranty would only marginally benefit their housing. See Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FLA. ST. U. L. REV. 485 (1987).

has the same richness or texture, however, as the student's experience of having litigated an individual case in which an actual person's interests were at stake. Students seem to have some sense of the limited utility of individual case representation, but when asked whether different decisions should be made about the kind of lawyering experiences the LTP program tries to create, most insist that individual client representation is preferred. For some, the reason lies in the egocentric nature of litigation as a lawyer driven enterprise. For others, however, it is the first time in which they have had an opportunity to become involved in the "everyday life" of someone whom they had considered marginal and somewhat blameworthy for their living condition. As one student stated, "Before I started representing Ms. B., I had all of the typical biases about people on welfare. My client, however, works everyday at McDonald's and is trying to take care of her two kids. She shouldn't have to live with roaches all over the place."

The student experienced that one could work everyday and still not be able to take care of her family adequately. It is quite possible that the student's lawyering experience worked only to create an exception to her general view about the blameworthiness of persons who are poor. But in the space of that momentary exception, there can be a dialogue with the student that makes the connection between the individual client experience and the broader context of poverty and its effects on people just like the one for whom the student has made an exception.

As important as learning how to be an effective translator for individual clients, is learning how to help groups of clients tell their own stories directly. The student becomes a translator/educator in this context. To teach this important aspect of role, I represent a tenant organization with my students. The representation has not included individual tenant representation. Rather, the students have been advising and training tenants to use a grievance procedure negotiated with the landlord. In order to assist with the training, students have had to learn the skills of negotiation, mediation, and arbitration. Student performance has turned from the adversarial presentation in a legal forum to a training/teaching function in a quasi-judicial forum. The implicit message is that lawyers *do* work with poor people and *can* help them to learn to do for themselves. It further teaches students about the essential role that poor people must play in alleviating the conditions under which they live. The students begin to see the lawyer as organizer, a function not normally attributed to the lawyer.¹⁸ Rather than viewing poor people as victims,

18. Wexler, *supra* note 11, at 1053; see also López, *The Work We Know So Little About*, *supra* note 10.

students begin to see them as architects of their own empowerment. The role of translator need not be the sole property of the lawyer. Collectively, poor people can speak for themselves and be heard. Moreover, students begin to understand the role of the lawyer as dynamic,¹⁹ one day a litigator, the next a teacher, and the next an organizer.

Conclusion

The role-based experiential or client representation component of the LTP program is an important window through which students can view various options. It is an opportunity for them to see that the kind of lawyer they wish to be is a matter of choice. There are apparent limitations pressed upon students by the lawyering role, and it is within this context that they are asked to begin making choices and taking responsibility for those choices.

An underlying assumption of this discussion is that placing students in the role of lawyer, as a central part of the way in which we expect them to learn about lawyering, will affect what professional values they develop. An important objective of the LTP program is to ensure that those values will encompass a career-long obligation and capacity to represent subordinated people and communities.²⁰ It is too soon to say whether the program's objectives are being fulfilled. Past research suggests that legal education has neither impeded nor nurtured students' quest for an identity as a responsible lawyer.²¹ But this research has looked at the traditional classroom setting. Perhaps experiments with integration of the classroom and experiential models of teaching and learning will produce evidence that what we do can make a difference.

19. Two colleagues who teach in the LTP program had their students observe sessions of Rent Court in the spring of 1990. Students were instructed in the Maryland and Baltimore local laws governing landlords' and tenants' rights, in pairs represented a tenant in Rent Court, and were instructed in the use of the data gathering instrument used during the observation of court sessions. BARBARA BEZDEK, *SILENCE IN THE COURT: PARTICIPATION AND SUBORDINATION OF POOR TENANTS' VOICES IN LEGAL PROCESS* nn. 48-50 (Sept. 1991) (analyzing how the apparent due process of Rent Court actually works to silence the voices of indigent tenants) (available from the author at the University of Maryland School of Law); see also Barbara Bezdek, "Legal Theory and Practice" Development at the University of Maryland: One Teacher's Experience in Programmatic Context (presentation to the Interuniversity Consortium Project Group on November 8-10, 1991 in Oxford, Miss.) (on file with the *Hastings Law Journal*).

20. The other objective of the LTP program is to provide a civil legal service to poor and underrepresented persons and communities.

21. See Willging & Dunn, *supra* note 6, at 358; see also RICHARD L. ABEL, *AMERICAN LAWYERS* 212-13 (1989).

